

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ENGELHARD CORPORATION,

Plaintiff,

V.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 05-11241-JLT

(Electronic filing)

[PARTIES' JOINT PROPOSED]

**ORDER REGARDING BRIEFING SCHEDULE AND FORMAT FOR
MOTIONS ADDRESSING PLAINTIFF'S FOURTH CAUSE OF ACTION**

PURSUANT TO the Court's order from the bench during the hearing held in Courtroom 20 on April 26, 2006, the parties hereby jointly submit a proposed order regarding the briefing schedule and format for motions addressing Plaintiff Engelhard Corporation's Fourth Cause of Action:

1. On or before July 17, 2006, the United States will file a motion (either pursuant to Rule 12 or, alternatively, Rule 56) addressing certain issues related to Engelhard's Fourth Cause of Action. Specifically, the motion shall be limited to the following issues:

a. Whether the Administrative Order referred to in Paragraphs 80-82 of the Complaint is an “administrative settlement” within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

b. Whether the Fourth Cause of Action is governed by the statute of limitations provided under Section 113(g)(3) of CERCLA, 42 U.S.C. § 9613(g)(3).

2. The United States' opening brief in support of its motion will be limited to 35 pages.

3. Plaintiff's brief in opposition to the United States' motion must be filed no later than August 17, 2006, and limited to 35 pages.

4. The United States may file a reply brief in support of its motion. Such reply brief is limited to 10 pages and must be filed not later than August 31, 2006.

5. Should Plaintiff wish to file a dispositive motion of its own addressing the same legal issues as set forth above (at Paragraph 1.a and 1.b), it may do so under the same format and timing that governs the briefing of the United States' motion — i.e., Plaintiff's opening brief of no more than 35 pages due July 17, 2006; United States opposition of no more than 35 pages due August 17, 2006, and Plaintiff's reply brief of no more than 10 pages due August 31, 2006.

6. With the exception of the issues identified in Paragraph 1.a and 1.b herein, this Order, and the parties' motions pursuant to this Order, are without prejudice to the right of either party to file later motions addressing issues related to Plaintiff's Fourth Cause of Action, including, without limitation, whether Defendants are liable persons within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and whether the costs sought by Plaintiffs through the Fourth Cause of Action are "necessary costs of response" within the meaning of Section 107(a)(4)(B) of CERCLA, 42 U.S.C. § 9607(a)(4)(B).

7. Consistent with the Court's instructions during the hearing held on April 26, 2006, no discovery may take place without further order from the Court. However, the parties are obligated to complete — within a reasonable time — any current, ongoing efforts to produce documents pursuant to the Court's Discovery Order dated February 16, 2006.

SO ORDERED this _____ day of May, 2006.

The Honorable Joseph L. Tauro
United States District Judge

Respectfully submitted,

FOR ENGELHARD CORPORATION:

May 8, 2006

/s/ Ronald L. Kuis (by S.E.C.)
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FOR THE UNITED STATES:

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May 8, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of May, 2006, I served a true and correct copy of the foregoing "Joint Proposed Order" on the following counsel of record, by ECF filing, as follows:

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